

- 28 • that the retailer keep a log of the transactions, including the date, identification
- 29 of the purchaser, and the product purchased, for not less than two years;
- 30 ▶ provides that any violation of these provisions is a class B misdemeanor, and that
- 31 subsequent violations are class A misdemeanors; and
- 32 ▶ provides that specified offenses involving clandestine drug laboratories, which are
- 33 second degree felonies, are punishable by the specified penalty of imprisonment for
- 34 an indeterminate term of not less than 3 years nor more than 15 years.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **58-37c-8**, as last amended by Chapter 271, Laws of Utah 2000

42 **58-37c-20**, as last amended by Chapter 1, Laws of Utah 2000

43 **58-37d-4**, as last amended by Chapter 90, Laws of Utah 2004

44 ENACTS:

45 **58-37c-20.5**, Utah Code Annotated 1953



47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **58-37c-8** is amended to read:

49 **58-37c-8. License -- Exceptions from licensure or regulation.**

50 (1) Any person engaged in a regulated transaction must be appropriately licensed under
51 this chapter as a regulated distributor and regulated purchaser unless excepted from licensure
52 under this chapter.

53 (2) The division shall:

54 (a) establish the form of application for a license, the requirements for licensure, and
55 fees for initial licensure and renewal; and

56 (b) identify required information to be contained in the application as a condition of
57 licensure.

58 (3) A practitioner who holds a Utah Controlled Substance License and a Controlled

59 Substance Registration issued by the Drug Enforcement Administration of the U.S.
60 Government is excepted from licensure under this chapter.

61 (4) Any purchase, sale, transfer, furnishing, or receipt of any drug intended for lawful
62 use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other
63 animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or
64 phenylpropanolamine, if ~~such~~ the drug is lawfully purchased, sold, transferred, or furnished
65 as an over-the-counter medication without prescription pursuant to the federal Food, Drug and
66 Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted ~~thereunder~~ under that act, are
67 excepted from licensure, reporting, and recordkeeping under this chapter, except that products
68 containing ephedrine or pseudoephedrine are subject to Section 58-37c-20.5.

69 (5) Any purchase, sale, transfer, receipt, or manufacture of any dietary supplement,
70 vitamins, minerals, herbs, or other similar substances, including concentrates or extracts, which
71 are not otherwise prohibited by law, and which may contain naturally occurring amounts of
72 chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63, Chapter
73 46a, Utah Administrative Rulemaking Act, are exempt from licensure under this chapter.

74 (6) A purchaser of two ounces or less of crystal iodine in a single transaction is not
75 required to be licensed as a regulated purchaser if the transaction complies with Section
76 58-37c-18.

77 (7) Any purchase, sale, transfer, receipt, or manufacture of any product that contains
78 any precursor chemical listed in Subsection 58-37c-3(2)(ff) or (gg) and that is not intended for
79 human consumption is exempt from licensure~~;~~ or regulation~~;~~ ~~or~~ and is not subject to
80 criminal penalties under this chapter.

81 Section 2. Section **58-37c-20** is amended to read:

82 **58-37c-20. Possession of ephedrine or pseudoephedrine -- Penalties.**

83 (1) Any person is guilty of a class A misdemeanor:

84 (a) who is not licensed to engage in regulated transactions and is not excepted from
85 licensure; and

86 (b) who, under circumstances not amounting to a violation of Subsection
87 58-37c-3(12)(k) or Subsection 58-37d-4(1)(a), possesses more than [12] 9 grams of ephedrine
88 or pseudoephedrine, their salts, isomers, or salts of isomers, or a combination of any of these
89 substances~~;~~ is guilty of a class A misdemeanor].

90 (2) ~~(a)~~ It is an affirmative defense to a charge under Subsection (1) that the person in
91 possession of ephedrine or pseudoephedrine, or a combination of these two substances:

92 (a) (i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer,
93 warehouseman, or common carrier, or an agent of any of these persons; and

94 (ii) possesses the substances in the regular course of lawful business activities~~[-]; or~~

95 (b) possesses the substance pursuant to a valid prescription as defined in Section
96 58-37-2.

97 ~~(b)(i)~~ (3) (a) The defendant shall provide written notice of intent to claim an
98 affirmative defense under this section as soon as practicable, but not later than ten days prior to
99 trial. The court may waive the notice requirement in the interest of justice for good cause
100 shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

101 ~~(ii)~~ (b) The notice shall include the specifics of the asserted defense.

102 ~~(iii)~~ (c) The defendant shall establish the affirmative defense by a preponderance of
103 the evidence. If the defense is established, it is a complete defense to the charges.

104 ~~(3)~~ (4) This section does not apply to dietary supplements, herbs, or other natural
105 products, including concentrates or extracts, which:

106 (a) are not otherwise prohibited by law; and

107 (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or
108 pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these
109 substances, that:

110 (i) are contained in a matrix of organic material; and

111 (ii) do not exceed 15% of the total weight of the natural product.

112 Section 3. Section **58-37c-20.5** is enacted to read:

113 **58-37c-20.5. Pseudoephedrine products -- Limitations on retail sale.**

114 (1) As used in this section, "product" means any product, mixture, or preparation, or
115 any combination of products that contain ephedrine or pseudoephedrine, its salts or isomers, or
116 salts of optical isomers, or a combination of any of these substances.

117 (2) A retail distributor:

118 (a) may not sell in one transaction product containing more than 3.6 grams of
119 ephedrine, pseudoephedrine, or a combination of these substances; and

120 (b) may not distribute or sell any product unless the retail distributor is in compliance

121 with Subsection (3).

122 (3) A retail distributor may not distribute or sell any product to any person, unless the
123 retail distributor:

124 (a) stores the product in an area not accessible to customers prior to the sale,
125 which area may include a locked cabinet to display the product in an area accessible to
126 customers, if the locked cabinet may be opened only by the retail distributor or its employees;

127 (b) requires the purchaser of the product to provide photo identification issued by a
128 governmental agency and that includes the purchaser's date of birth; and

129 (c) maintains a written or electronic log under Subsection (4) of the sales made under
130 this section.

131 (4) (a) Each retail distributor shall maintain an electronic or written log that contains
132 the following information regarding each person to whom product is distributed or sold under
133 this section. The log shall include:

134 (i) the person's name and date of birth, as demonstrated by a form of personal
135 identification issued by the state or the federal government and that provides an identifying
136 photograph of the person;

137 (ii) the form of identification presented;

138 (iii) the date and time of the transaction; and

139 (iv) the brand name and the amount of the product purchased or received in the
140 transaction.

141 (b) The retail distributor shall maintain the information required to be recorded in a log
142 under Subsection (4)(a) for not less than two years.

143 (5) (a) A person may not knowingly and intentionally use, release, publish, or
144 otherwise make available to any person or entity any information in or obtained from a log
145 maintained by a retail distributor under this section for any purpose other than those specified
146 in Subsection (5)(b).

147 (b) The retail distributor or its designee shall make information in the log available
148 only to:

149 (i) federal, state, and local law enforcement authorities engaged as a duty of their
150 employment in enforcing laws regulating controlled substances; and

151 (ii) an individual;

152 (A) whose request is for records in the log of that individual's purchase or receipt of
153 product; and

154 (B) who has provided evidence satisfactory to the retail distributor that the individual is
155 in fact the person regarding whom the requested log entry is made.

156 (c) Any person who knowingly and intentionally releases or modifies any information
157 in the log in violation of the limitations under this Subsection (5) is guilty of a class B
158 misdemeanor.

159 (6) (a) A person may not purchase in one transaction product containing more than 3.6
160 grams of ephedrine, pseudoephedrine, or a combination of these substances.

161 (b) A person may not purchase product containing more than 9 grams of ephedrine,
162 pseudoephedrine, or a combination of these substances in any 30-day period.

163 (7) A person may not possess, receive, or otherwise acquire at any one time product
164 containing more than 9 grams of ephedrine, pseudoephedrine, or a combination of these
165 substances.

166 (8) This section does not apply to any quantity of product containing ephedrine or
167 pseudoephedrine and possessed by:

168 (a) a physician, pharmacist, retail distributor, wholesaler, manufacturer,
169 warehouseman, or common carrier, or any agent of these persons, who possess the product in
170 the regular course of lawful business activities; or

171 (b) a person who possesses the product pursuant to a valid prescription as defined in
172 Section 58-37-2.

173 (9) (a) A violation of this section is a class B misdemeanor, and a second or subsequent
174 violation of this section is a class A misdemeanor.

175 (b) For purposes of this section, a plea of guilty or no contest to a violation of this
176 section which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the
177 equivalent of a conviction for a violation of this section, even if the charge has been
178 subsequently reduced or dismissed in accordance with a plea in abeyance agreement.

179 Section 4. Section **58-37d-4** is amended to read:

180 **58-37d-4. Prohibited acts -- Second degree felony.**

181 (1) It is unlawful for any person to knowingly or intentionally:

182 (a) possess a controlled substance precursor with the intent to engage in a clandestine

183 laboratory operation;

184 (b) possess laboratory equipment or supplies with the intent to engage in a clandestine
185 laboratory operation;

186 (c) sell, distribute, or otherwise supply a precursor chemical, laboratory equipment, or
187 laboratory supplies, knowing or having reasonable cause to believe [it] any of these items will
188 be used for a clandestine laboratory operation;

189 (d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled
190 Substance Precursor Act, or the [~~regulations~~] administrative rules issued under that [act]
191 chapter, knowing or having reasonable cause to believe that the material distributed or received
192 will be used for a clandestine laboratory operation;

193 (e) conspire with or aid another to engage in a clandestine laboratory operation;

194 (f) produce or manufacture, or possess with intent to produce or manufacture a
195 controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah
196 Controlled Substances Act;

197 (g) transport or convey a controlled or counterfeit substance with the intent to
198 distribute or to be distributed by the person transporting or conveying the controlled or
199 counterfeit substance or by any other person regardless of whether the final destination for the
200 distribution is within this state or any other location; or

201 (h) engage in compounding, synthesis, concentration, purification, separation,
202 extraction, or other physical or chemical processing of any substance, including a controlled
203 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container
204 holding a substance that is a product of any of these activities, knowing or having reasonable
205 cause to believe that the substance is a product of any of these activities and will be used in the
206 illegal manufacture of specified controlled substances.

207 (2) A person who violates any provision of Subsection (1) is guilty of a second degree
208 felony punishable by imprisonment for an indeterminate term of not less than 3 years nor more
209 than 15 years.

Legislative Review Note
as of 11-20-06 6:57 AM

Office of Legislative Research and General Counsel

S.B. 112 - Methamphetamine Precursor Access Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Impact to retail distributors could be affected by provisions of this bill, but federal laws already impose many of the same requirements.

1/17/2007, 8:57:20 AM, Lead Analyst: Ricks, G.

Office of the Legislative Fiscal Analyst